

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SIGHT SCIENCES, INC.,

Plaintiff,

v.

IVANTIS, INC., ALCON RESEARCH LLC,  
ALCON VISION, LLC AND ALCON INC.,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

C. A. No.: 21-1317-GBW-SRF

**JURY TRIAL DEMANDED**

**Redacted - Public Version Filed on:  
November 14, 2023**

**CONCISE STATEMENT OF ADDITIONAL FACTS IN SUPPORT OF  
SIGHT SCIENCES, INC.'S OPPOSITION TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT NO. 1 OF INVALIDITY FOR LACK OF ENABLEMENT**

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

Melanie K. Sharp (No. 2501)  
James L. Higgins (No. 5021)  
Taylor E. Hallowell (No. 6815)  
1000 North King Street  
Wilmington, DE 19801  
(302) 571-6600  
[msharp@ycst.com](mailto:msharp@ycst.com)  
[jhiggins@ycst.com](mailto:jhiggins@ycst.com)  
[thallowell@ycst.com](mailto:thallowell@ycst.com)

COOLEY LLP  
Michelle S. Rhyu  
Jeffrey Karr  
Lauren Strosnick  
Alissa Wood  
Juan Pablo González  
Angela R. Madrigal  
3175 Hanover Street  
Palo Alto, CA 94304-1130  
(650) 843-5000

Orion Armon  
1144 15<sup>th</sup> Street, Suite 2300  
Denver, CO 80202-2686  
(720) 566-4000

Dustin M. Knight  
Joseph Van Tassel  
Reston Town Center  
11951 Freedom Drive, 14th Floor  
Reston, VA 20190-5656  
(703) 456-8000

Bonnie Fletcher Price  
1299 Pennsylvania Avenue, NW, Suite 700  
Washington, DC 20004-2400  
(202) 842-7800

*Attorneys for Sight Sciences, Inc.*

Dated: November 2, 2023

1. The Asserted Claims containing one of the limitations that Defendants collectively refer to as the “Block Limitation” (*see* D.I. 300 (DSOF1) ¶2) include structural limitations that limit the scope of the claims and serve to guide a POSA on how to achieve the “does not significantly block” flow limitation. (*See* Ex. 90 (Downs Reb.) ¶¶1064-1066, 1082-1093; Ex. 93 (Downs 9/28 Tr.) 35:7-25, 89:7-15.) For example, the Asserted Claims recite the following: (a) a **“support”** structure that props open Schlemm’s canal (all Asserted Claims); (b) support includes an **“arcuate member”** (all Asserted Claims of ’443, ’361, ’742, & ’328); (c) arcuate member has a **radius of curvature smaller than that of Schlemm’s canal** (all Asserted Claims of ’443, ’361, ’742, & ’328); (d) the arcuate member **extends out of Schlemm’s canal** (all Asserted Claims of ’443, ’742, & ’328; ’361, cl. 9); (e) support **contacts less than 30%** of internal wall surface area (all Asserted Claims of ’443 and ’482; ’742, cl. 13; ’328, cl. 21); (f) support has at least one **fenestration** (all Asserted Claims of the ’482 & ’361; ’443, cl. 8; ’742, cl. 2; ’328, cls. 22-23); (g) support has a **circumference equal to about a [half /quarter] or less than** the circumference of Schlemm’s canal (’443, cls. 11-12; ’742, cl. 3; ’328, cl. 18); (h) **discontinuous or periodic contact along a perimeter** of the lumen of the canal (’482, cls. 7, 38, 69); (i) support has **fluted edges** (’482, cls. 5, 36, 68), among others.

2. The Asserted Patents teach “what it is about the claimed invention that provides the claimed function” of “not significantly block[ing]” fluid flow from the trabecular meshwork—specifically, the support props open Schlemm’s canal while having minimal contact with the walls of the canal, particularly the portions interfacing with the trabecular meshwork and collector channels. The specification teaches that these are “common characteristic[s]” of devices for satisfying the Block Limitation. (*E.g.*, ’443, 10:61-65, 11:30-38; *see also* Ex. 90 (Downs Reb.) ¶¶1082-1093.)

3. The Figures (and associated disclosures) of the Asserted Patents show various devices that prop open Schlemm's canal while minimizing contact with the walls of the canal, particularly the portions interfacing with the trabecular meshwork and collector channels. (*See, e.g.,* '443, 7:22-13:9, Figs. 5B-12H; Ex. 90 (Downs Reb.) ¶¶1082-1091; Ex. 93 (Downs 9/28 Tr.) 130:14-132:4.)

4. Determining whether a device satisfies the Block Limitation does not require a POSA to undertake extensive experimentation, does not require testing all potential supports, and does not require "painstaking experimentation." Rather, the amount of modeling or testing required, if any, (which a POSA would appreciate depends on the design) was routine. (Ex. 93 (Downs 9/28 Tr.) 37:11-21, 67:9-15, 71:8-72:9, 73:9-74:11, 77:19-78:14, 95:6-16, 103:5-15, 112:22-114:2, 116:15-117:5, 117:17-24, 130:14-132:4; Ex. 90 (Downs Reb.) ¶¶168-171, 1097-1102.)

5. Sight's expert Dr. Crawford Downs testified that a POSA would appreciate that some devices require no experimentation or modeling. (Ex. 93 (Downs 9/28 Tr.) 37:11-21, 85:16-87:19, 95:6-16, 130:14-132:4; Ex. 90 (Downs Reb.) ¶¶1084-1085.) He did not admit that "testing or modeling is required to determine whether a support has the claimed functionality."

6. Defendants themselves contend that a POSA would recognize that structures designed to minimize a support's contact with the walls of Schlemm's canal act to facilitate and not significantly block flow. (*E.g.,* Ex. 87 ('443 IPR Pet.) 30, 39-41, 50; Ex. 88 ('443 IPR Reynard Decl.) ¶¶69-71, 92-93; Ex. 89 (Tanna Op.) ¶¶141, 150, 153-154, 157, 239, 443.) Defendants contend that no experimentation was required to determine that such devices do not block flow. (*Id.*)

7. The field of the invention is the mechanical arts, involving structures for facilitating

fluid flow in the eye. A POSA with engineering training, having knowledge and experience with fluid mechanics and the design of intraocular implants, would have appreciated that the structural features taught by the Asserted Patents would lead to predictable, testable effects on flow, based on understood scientific principles. (*See* Ex. 90 (Downs Reb.) ¶¶168-171, 1074-1081; *see also*, *e.g.*, Ex. 93 (Downs 9/28 Tr.) 69:3-20, 86:2-87:8; Ex. 99 (Downs 9/22 Tr.) 225:8-227:23, 228:12-14, 286:3-12; Ex. 91 (IVANTIS\_SS\_00454336) at 454350-61 (“These basic principles and formulas have been used to study aqueous outflow for decades.”); Ex. 92 (IVANTIS\_SS\_00172874) at 172932-33.)

8. The inventors did not fail to make a functional prototype. They were delayed in making a prototype due to lack of funding. (Ex. 86 (P. Badawi 6/23 Tr.) 108:15-109:4, 109:22-110:7.) Through personal funding and initial investments in their startup company, they were able to make and test an embodiment of the invention they called “Helix” in a cadaver eye perfusion study (*id.*, 110:8-23, 133:18-134:8.) That testing (conducted at the Mayo Clinic in 2010) affirmed that the devices facilitated and did not block fluid outflow and successfully reduced intraocular pressure (IOP) in glaucomatous eyes having a higher starting IOP. (Ex. 90 (Downs Reb.) ¶1079; Ex. 86 (P. Badawi 6/23 Tr.) 148:9-16; Ex. 94 (SGHT0161700) at 161701-03.)

9. Whether a device facilitated and did not block flow could be determined through analytical or computational models, the use of which was routine and within the skill of a POSA. (Ex. 93 (Downs 9/28 Tr.) 64:10-65:7, 67:9-15, 69:3-71:4, 71:8-74:11, 77:19-78:14, 79:11-21, 80:8-81:25, 82:13-85:3, 98:10-100:11; Ex. 90 (Downs Reb.) ¶¶168-171, 1068-1069, 1074-1077, 1099.)

10. A POSA understood that cadaver eye experiments could determine whether a device substantially interfered with flow. (Ex. 93 (Downs 9/28 Tr.) 77:19-78:14, 98:10-100:11,

103:5-15, 108:18-109:12; Ex. 90 (Downs Reb.) ¶¶1068-1069, 1071-1072, 1078, 1099; Ex. 60 (Bahler); Ex. 101 (Tanna 12/15 Tr.) 161:22-162:8, 163:13-21.)

11. A POSA recognized that cadaver eye experiments closely mimic *in vivo* conditions. Such experiments were routine. (Ex. 93 (Downs 9/28 Tr.) 103:19-104:11, 111:18-114:17, 115:7-12, 116:15-117:5, 117:17-24; Ex. 90 (Downs Reb.) ¶1072; Ex. 100 (Downs Reply) ¶¶56, 63.)

12. A POSA understood that fluorescent dye studies were routine to visualize flow of aqueous humor through the trabecular meshwork and Schlemm's canal. (Ex. 93 (Downs 9/28 Tr.) 12:15-24, 113:12-114:2; Ex. 102 (Downs 9/28 Tr. Ex. 5); Ex. 90 (Downs Reb.) ¶168.)

13. Defendants understood and used terms like the Block Limitation in describing how the Hydrus device facilitates (and does not block) flow from the trabecular meshwork and into Schlemm's canal. For example, Defendants' documents show: Hydrus' windows allow fluid to exit through the trabecular meshwork. (*See* Ex. 21 (IVANTIS\_SS\_00415663) at 415712, 415721; Ex. 9 (Kimball Tr.) 94:21-23; Ex. 22 (IVANTIS\_SS\_00006997) at 7001 ("Hydrus Microstent also has 3 large windows that face the trabecular meshwork to allow aqueous to easily pass through the trabecular meshwork into Schlemm's canal."); Ex. 23 (IVANTIS\_SS\_00276222) at 276226; Ex. 97 (Downs Op.) ¶¶87-89, 91, 95-96; Ex. 100 (Downs Reply) ¶¶45-49, 51-52, 62.)

14. Ivantis represented to the FDA that windows of the Hydrus were designed to and did enable flow from the trabecular meshwork into Schlemm’s canal. (Ex. 24 (IVANTIS\_SS\_00074707) at 74723 (“[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]”); see also Ex. 25 (IVANTIS\_SS\_00023750) at 23768; Ex. 97 (Downs Op.) ¶¶87-88, 91; Ex. 100 (Downs Reply) ¶49.)

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Melanie K. Sharp*

---

Melanie K. Sharp (No. 2501)  
James L. Higgins (No. 5021)  
Taylor E. Hallowell (No. 6815)  
1000 North King Street  
Wilmington, DE 19801  
(302) 571-6600  
[msharp@ycst.com](mailto:msharp@ycst.com)  
[jhiggins@ycst.com](mailto:jhiggins@ycst.com)  
[thallowell@ycst.com](mailto:thallowell@ycst.com)

COOLEY LLP  
Michelle S. Rhyu  
Jeffrey Karr  
Lauren Strosnick  
Alissa Wood  
Juan Pablo González  
Angela R. Madrigal  
3175 Hanover Street  
Palo Alto, CA 94304-1130  
(650) 843-5000

Orion Armon  
1144 15<sup>th</sup> Street, Suite 2300  
Denver, CO 80202-2686  
(720) 566-4000

Dustin M. Knight  
Joseph Van Tassel  
Reston Town Center  
11951 Freedom Drive, 14th Floor  
Reston, VA 20190-5656  
(703) 456-8000

Bonnie Fletcher Price  
1299 Pennsylvania Avenue, NW  
Suite 700  
Washington, DC 20004-2400  
(202) 842-7800

Dated: November 2, 2023

*Attorneys for Sight Sciences, Inc.*

**CERTIFICATE OF SERVICE**

I, Melanie K. Sharp, Esquire, hereby certify that on November 2, 2023, I caused to be electronically filed a true and correct copy of Concise Statement of Additional Facts in Support of Sight Sciences, Inc.'s Opposition to Defendants' Motion for Summary Judgment No. 1 of Invalidity for Lack of Enablement with the Clerk of the Court using CM/ECF, which will send notification to the following counsel of record:

John W. Shaw  
Karen E. Keller  
Andrew E. Russell  
Nathan R. Hoeschen  
Shaw Keller LLP  
I.M. Pei Building  
1105 North Market Street, 12<sup>th</sup> Floor  
Wilmington, DE 19801  
[jshaw@shawkeller.com](mailto:jshaw@shawkeller.com)  
[kkeller@shawkeller.com](mailto:kkeller@shawkeller.com)  
[arussell@shawkeller.com](mailto:arussell@shawkeller.com)  
[nhoeschen@shawkeller.com](mailto:nhoeschen@shawkeller.com)

I further certify that on November 2, 2023, I caused a copy of the foregoing document to be served on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

**BY E-MAIL:**

Gregg LoCascio  
Sean M. McEldowney  
W. Todd Baker  
Justin Bova  
Steven Dirks  
Socrates L. Boutsikaris  
Kirkland & Ellis LLP  
1301 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
[gregg.locascio@kirkland.com](mailto:gregg.locascio@kirkland.com)  
[sean.mceldowney@kirkland.com](mailto:sean.mceldowney@kirkland.com)  
[justin.bova@kirkland.com](mailto:justin.bova@kirkland.com)  
[steven.dirks@kirkland.com](mailto:steven.dirks@kirkland.com)  
[socrates.boutsikaris@kirkland.com](mailto:socrates.boutsikaris@kirkland.com)

Jeanne M. Heffernan  
Kat Li  
Austin C. Teng  
Ryan J. Melde  
Lydia B. Cash  
Kirkland & Ellis LLP  
401 Congress Avenue  
Austin, TX 78701  
[jheffernan@kirkland.com](mailto:jheffernan@kirkland.com)  
[kat.li@kirkland.com](mailto:kat.li@kirkland.com)  
[austin.teng@kirkland.com](mailto:austin.teng@kirkland.com)  
[ryan.melde@kirkland.com](mailto:ryan.melde@kirkland.com)  
[lydia.cash@kirkland.com](mailto:lydia.cash@kirkland.com)

Ryan Kane  
Nathaniel DeLucia  
Laura Zhu  
Emily C. Sheffield  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
[ryan.kane@kirkland.com](mailto:ryan.kane@kirkland.com)  
[nathaniel.delucia@kirkland.com](mailto:nathaniel.delucia@kirkland.com)  
[laura.zhu@kirkland.com](mailto:laura.zhu@kirkland.com)  
[emily.sheffield@kirkland.com](mailto:emily.sheffield@kirkland.com)

Brian A. Verbus  
Jacob Rambeau  
300 N. LaSalle  
Chicago, IL 60654  
[brian.verbus@kirkland.com](mailto:brian.verbus@kirkland.com)  
[jake.rambeau@kirkland.com](mailto:jake.rambeau@kirkland.com)

Noah S. Frank  
200 Clarendon Street  
Boston, MA 02116  
[noah.frank@kirkland.com](mailto:noah.frank@kirkland.com)

/s/ Melanie K. Sharp  
Melanie K. Sharp (No. 2501)